

38 §482. DEFINITIONS

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As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 700, §2 (AMD).]

1. Board.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §85 (RP) .]

1-A. Borrow pit. "Borrow pit" means a mining operation undertaken primarily to extract and remove sand, fill or gravel. "Borrow pit" does not include any mining operation undertaken primarily to extract or remove rock or clay.

[1993, c. 350, §2 (NEW) .]

2. Development of state or regional significance that may substantially affect the environment. "Development of state or regional significance that may substantially affect the environment," in this article also called "development," means any federal, state, municipal, quasi-municipal, educational, charitable, residential, commercial or industrial development that:

- A. Occupies a land or water area in excess of 20 acres; [1997, c. 502, §5 (RPR) .]
- B. Is a metallic mineral mining or advanced exploration activity as defined in this section or an oil or gas exploration or production activity that includes drilling or excavation under water; [2005, c. 330, §18 (AMD) .]
- C. Is a structure as defined in this section; [1997, c. 502, §5 (RPR) .]
- D. Is a subdivision as defined in this section; [2009, c. 615, Pt. E, §13 (AMD) .]
- E. [1999, c. 468, §7 (RP) .]
- F. Is an oil terminal facility as defined in this section; or [2009, c. 615, Pt. E, §14 (AMD) .]
- F. [1993, c. 680, Pt. C, §7 (RP) .]
- G. [1993, c. 680, Pt. C, §7 (RP) .]
- H. [1993, c. 680, Pt. C, §7 (RP) .]
- I. [1997, c. 502, §5 (RP) .]
- J. Is an offshore wind power project with an aggregate generating capacity of 3 megawatts or more. [2009, c. 615, Pt. E, §15 (NEW) .]

[2009, c. 615, Pt. E, §§13-15 (AMD) .]

2-A. Exploration.

[1993, c. 383, §4 (RP); 1993, c. 383, §42 (AFF) .]

2-B. Metallic mineral mining or advanced exploration activity. "Metallic mineral mining or advanced exploration activity," in this article also called "mining," means an activity or process necessary for the extraction or removal of metallic minerals or overburden or for the preparation, washing, cleaning or other treatment of metallic minerals and includes the bulk sampling, extraction or beneficiation of metallic minerals, not including test sampling methods conducted in accordance with rules adopted by the department such as test boring, test drilling, hand sampling and digging of test pits with a limited maximum surface opening or methods determined by the department to cause minimal disturbance of soil or vegetative cover.

A. [1995, c. 700, §4 (RP).]

B. [1995, c. 700, §4 (RP).]

C. [1995, c. 700, §4 (RP).]

[1995, c. 700, §4 (AMD) .]

2-C. Hazardous activity.

[1993, c. 383, §42 (AFF); 1993, c. 383, §6 (RP) .]

2-D. Multi-unit housing.

[1993, c. 383, §42 (AFF); 1993, c. 383, §7 (RP) .]

2-E. Coastal wetlands. "Coastal wetlands" has the same meaning as in section 480-B, subsection 2.

[1993, c. 383, §42 (AFF); 1993, c. 383, §8 (AMD) .]

2-F. Freshwater wetlands. "Freshwater wetlands" has the same meaning as in section 480-B, subsection 4.

A. [1993, c. 383, §42 (AFF); 1993, c. 383, §9 (RP).]

B. [1993, c. 383, §42 (AFF); 1993, c. 383, §9 (RP).]

C. [1993, c. 383, §42 (AFF); 1993, c. 383, §9 (RP).]

[1993, c. 383, §42 (AFF); 1993, c. 383, §9 (AMD) .]

3. Natural environment of a locality.

[1993, c. 383, §10 (RP); 1993, c. 383, §42 (AFF) .]

3-A. Overburden. "Overburden" means earth and other materials naturally lying over the product to be mined.

[1979, c. 466, §13 (NEW) .]

3-B. Normal high-water line. "Normal high-water line" has the same meaning as in section 480-B, subsection 6.

[1993, c. 383, §11 (AMD); 1993, c. 383, §42 (AFF) .]

3-C. Passenger car equivalents at peak hour.

[1999, c. 468, §8 (RP) .]

3-D. Oil terminal facility. "Oil terminal facility" means a facility and related appurtenances located in, on, over or under the surface of any land or water that is used or capable of being used to transfer, process, refine or store oil as defined in section 542, subsection 6. "Oil terminal facility" does not include:

A. A facility used or capable of being used to store less than 1,500 barrels or 63,000 gallons of oil;

[1997, c. 502, §6 (NEW) .]

B. A facility not engaged in the transfer of oil to or from the waters of the State; or [1997, c. 502, §6 (NEW) .]

C. A facility consisting only of a vessel or vessels as defined in section 542, subsection 11. [1997, c. 502, §6 (NEW) .]

[1997, c. 502, §6 (NEW) .]

4. Person. "Person" means any person, firm, association, partnership, corporation, municipal or other local governmental entity, quasi-municipal entity, state agency, federal agency, educational or charitable organization or institution or other legal entity.

[1993, c. 383, §12 (AMD); 1993, c. 383, §42 (AFF) .]

4-A. Product.

[1995, c. 700, §5 (RP) .]

4-B. Reclamation. "Reclamation" means the rehabilitation of the area of land affected by mining under a plan approved by the department, including, but not limited to, the stabilization of slopes and creation of safety benches, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest and the enhancement of wildlife and aquatic resources, but not including the filling in of pits and the filling or sealing of shafts and underground workings with solid materials unless necessary for protection of ground water or safety.

[1993, c. 383, §13 (AMD); 1993, c. 383, §42 (AFF) .]

4-C. Primary sand and gravel recharge areas.

[1993, c. 383, §14 (RP); 1993, c. 383, §42 (AFF) .]

4-D. Significant ground water aquifer. "Significant ground water aquifer" means a porous formation of ice-contact and glacial outwash sand and gravel or fractured bedrock that contains significant recoverable quantities of water which is likely to provide drinking water supplies.

[1987, c. 812, §§5, 18 (AMD) .]

4-E. River, stream or brook. "River, stream or brook" has the same meaning as in section 480-B, subsection 9.

[1993, c. 383, §15 (AMD); 1993, c. 383, §42 (AFF) .]

4-F. Shoreland zone. "Shoreland zone" has the same meaning as "shoreland areas" in section 435. Terms used within this definition have the same meanings as in section 436-A.

[1993, c. 383, §16 (AMD); 1993, c. 383, §42 (AFF) .]

5. Subdivision. A "subdivision" is the division of a parcel of land into 5 or more lots to be offered for sale or lease to the general public during any 5-year period, if the aggregate land area includes more than 20 acres; except that when all lots are for single-family, detached, residential housing, common areas or open space a "subdivision" is the division of a parcel of land into 15 or more lots to be offered for sale or lease to the general public within any 5-year period, if the aggregate land area includes more than 30 acres. The aggregate land area includes lots to be offered together with the roads, common areas, easement areas and all portions of the parcel of land in which rights or interests, whether express or implied, are to be offered. This definition of "subdivision" is subject to the following exceptions:

A. [1989, c. 769, §2 (RP) .]

B. [1989, c. 769, §3 (RP) .]

C. Lots of 40 or more acres but not more than 500 acres may not be counted as lots except where:

(1) The proposed subdivision is located wholly or partly within the shoreland zone; [1993, c. 680, Pt. A, §35 (RPR).]

C-1. Lots of more than 500 acres in size may not be counted as lots; [1993, c. 680, Pt. A, §35 (RPR).]

D. Five years after a subdivider establishes a single-family residence for that subdivider's own use on a parcel and actually uses all or part of the parcel for that purpose during that period, a lot containing that residence may not be counted as a lot; [1993, c. 680, Pt. A, §35 (RPR).]

E. Unless intended to circumvent this article, the following transactions may not be considered lots offered for sale or lease to the general public:

(1) Sale or lease of lots to an abutting owner or to a spouse, child, parent, grandparent or sibling of the developer if those lots are not further divided or transferred to a person not so related to the developer within a 5-year period, except as provided in this subsection;

(2) Personal, nonprofit transactions, such as the transfer of lots by gift, if those lots are not further divided or transferred within a 5-year period or the transfer of lots by devise or inheritance; or

(3) Grant of a bona fide security interest in the whole lot or subsequent transfer of the whole lot by the original holder of the bona fide security interest or that person's successor in interest; [1995, c. 493, §5 (AMD).]

F. In those subdivisions that would otherwise not require site location approval, unless intended to circumvent this article, the following transactions may not, except as provided, be considered lots offered for sale or lease to the general public:

(1) Sale or lease of common lots created with a conservation easement as defined in Title 33, section 476, provided that the department is made a party; and [1993, c. 680, Pt. A, §35 (RPR).]

G. [1987, c. 864, §1 (RP).]

G-1. [1987, c. 864, §2 (RP).]

H. The transfer of contiguous land by a permit holder to the owner of a lot within a permitted subdivision is exempt from review under this article, provided that the land was not owned by the permit holder at the time the department approved the subdivision. Further division of the transferred land must be reviewed under this article. [1993, c. 680, Pt. A, §35 (RPR).]

The exception described in paragraph F does not apply, and the subdivision requires site location approval, whenever the use of a lot described in paragraph F changes or the lot is offered for sale or lease to the general public without the limitations set forth in paragraph F. For the purposes of this subsection only, a parcel of land is defined as all contiguous land in the same ownership provided that lands located on opposite sides of a public or private road are considered each a separate parcel of land unless that road was established by the owner of land on both sides of the road subsequent to January 1, 1970. A lot to be offered for sale or lease to the general public is counted, for purposes of determining jurisdiction, from the time a municipal subdivision plan showing that lot is recorded or the lot is sold or leased, whichever occurs first, until 5 years after that recording, sale or lease.

[1997, c. 603, §2 (AMD) .]

6. Structure. A "structure" means:

A. [1993, c. 383, §18 (RP); 1993, c. 383, §42 (AFF).]

B. Buildings, parking lots, roads, paved areas, wharves or areas to be stripped or graded and not to be revegetated that cause a total project to occupy a ground area in excess of 3 acres. Stripped or graded areas that are not revegetated within a calendar year are included in calculating the 3-acre threshold. [1993, c. 383, §18 (AMD); 1993, c. 383, §42 (AFF) .]

[1993, c. 383, §18 (AMD); 1993, c. 383, §42 (AFF) .]

7. Storage facility.

[1995, c. 704, Pt. A, §6 (RP); 1995, c. 704, Pt. C, §2 (AFF) .]

8. Offshore wind power project. "Offshore wind power project" means a project that uses a windmill or wind turbine to convert wind energy to electrical energy and is located in whole or in part within coastal wetlands as defined in section 480-B, subsection 2. "Offshore wind power project" includes both generating facilities as defined by Title 35-A, section 3451, subsection 5 and associated facilities as defined by Title 35-A, section 3451, subsection 1, without regard to whether the electrical energy is for sale or use by a person other than the generator.

[2009, c. 615, Pt. E, §16 (NEW) .]

SECTION HISTORY

1969, c. 571, §2 (NEW). 1971, c. 593, §22 (AMD). 1971, c. 613, §§2,3 (AMD). 1971, c. 618, §12 (AMD). 1973, c. 625, §276 (AMD). 1975, c. 214, (AMD). 1975, c. 297, (AMD). 1975, c. 712, (AMD). 1979, c. 466, §§12,13 (AMD). 1979, c. 541, §A263 (AMD). 1981, c. 227, §§1,2 (AMD). 1981, c. 449, §§4-6,9 (AMD). 1981, c. 698, §190 (AMD). 1983, c. 500, §2 (AMD). 1983, c. 513, §2 (AMD). 1983, c. 743, §13 (AMD). 1983, c. 788, §§1-3 (AMD). 1983, c. 819, §A63 (AMD). 1985, c. 162, §7 (AMD). 1985, c. 479, §5 (AMD). 1985, c. 654, (AMD). 1987, c. 130, (AMD). 1987, c. 737, §§C90,C106 (AMD). 1987, c. 810, §§9-11 (AMD). 1987, c. 812, §§2-8,18 (AMD). 1987, c. 864, §§1,2 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 497, §12 (AMD). 1989, c. 600, §A19 (AMD). 1989, c. 769, §§2-4 (AMD). 1989, c. 890, §§A40,B85,86 (AMD). RR 1991, c. 2, §146 (COR). 1991, c. 160, §1 (AMD). 1991, c. 500, §3 (AMD). 1993, c. 350, §§1-3 (AMD). 1993, c. 366, §§1-3 (AMD). 1993, c. 366, §4 (AFF). 1993, c. 383, §§3-18 (AMD). 1993, c. 383, §42 (AFF). 1993, c. 680, §§A35,C7 (AMD). 1995, c. 493, §5 (AMD). 1995, c. 700, §§2-5 (AMD). 1995, c. 704, §§A3-6 (AMD). 1995, c. 704, §C2 (AFF). 1997, c. 502, §§5,6 (AMD). 1997, c. 603, §2 (AMD). 1999, c. 468, §§6-8 (AMD). 2005, c. 330, §18 (AMD). 2009, c. 615, Pt. E, §§13-16 (AMD).

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38 §484. STANDARDS FOR DEVELOPMENT

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The department shall approve a development proposal whenever it finds the following. [1995, c. 704, Pt. A, §8 (AMD); 1995, c. 704, Pt. C, §2 (AFF).]

1. Financial capacity and technical ability. The developer has the financial capacity and technical ability to develop the project in a manner consistent with state environmental standards and with the provisions of this article. The commissioner may issue a permit under this article that conditions any site alterations upon a developer providing the commissioner with evidence that the developer has been granted a line of credit or a loan by a financial institution authorized to do business in the State as defined in Title 9-B, section 131, subsection 17-A or with evidence of any other form of financial assurance the board determines by rule to be adequate.

[2009, c. 293, §1 (AMD) .]

2. Traffic movement.

[1999, c. 468, §9 (RP) .]

3. No adverse effect on the natural environment. The developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.

A. In making a determination under this subsection, the department may consider the effect of noise from a commercial or industrial development. Noise from a residential development approved under this article may not be regulated under this subsection, and noise generated between the hours of 7 a.m. and 7 p.m. or during daylight hours, whichever is longer, by construction of a development approved under this article may not be regulated under this subsection. [1993, c. 383, §21 (NEW); 1993, c. 383, §42 (AFF) .]

B. In determining whether a developer has made adequate provision for the control of noise generated by a commercial or industrial development, the department shall consider board rules relating to noise and the quantifiable noise standards of the municipality in which the development is located and of any municipality that may be affected by the noise. [1993, c. 383, §21 (NEW); 1993, c. 383, §42 (AFF) .]

C. Nothing in this subsection may be construed to prohibit a municipality from adopting noise regulations stricter than those adopted by the board. [1993, c. 383, §21 (NEW); 1993, c. 383, §42 (AFF) .]

D. [1995, c. 700, §6 (RP) .]

E. [1995, c. 700, §6 (RP) .]

F. In making a determination under this subsection regarding a structure to facilitate withdrawal of groundwater, the department shall consider the effects of the proposed withdrawal on waters of the State, as defined by section 361-A, subsection 7; water-related natural resources; and existing uses, including, but not limited to, public or private wells, within the anticipated zone of contribution to the withdrawal. In making findings under this paragraph, the department shall consider both the direct effects of the proposed water withdrawal and its effects in combination with existing water withdrawals. [2005, c. 452, Pt. A, §3 (NEW) .]

G. In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, or an offshore wind power project with an aggregate generating capacity of 3 megawatts or more, the department shall consider the development's or project's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452. [2009, c. 615, Pt. E, §17 (AMD) .]

H. In making a determination under this subsection regarding a development's effects on significant vernal pool habitat, the department shall apply the same standards applied to significant vernal pool habitat under rules adopted pursuant to the Natural Resources Protection Act. The department may not require a buffer strip adjacent to significant vernal pool habitat unless the buffer strip is established for another protected natural resource as defined in section 480-B, subsection 8. [2011, c. 359, §3 (NEW) .]

[2011, c. 359, §3 (AMD) .]

4. Soil types. The proposed development will be built on soil types that are suitable to the nature of the undertaking.

[1995, c. 704, Pt. A, §10 (AMD); 1997, c. 603, §§8, 9 (AFF) .]

4-A. Storm water management and erosion and sedimentation control. The proposed development, other than a metallic mineral mining or advanced exploration activity, meets the standards for storm water management in section 420-D and the standard for erosion and sedimentation control in section 420-C. A proposed metallic mineral mining or advanced exploration activity must meet storm water standards in department rules adopted to implement subsections 3 and 7. If exempt under section 420-D, subsection 7, a proposed development must satisfy the applicable storm water quantity standard and, if the development is located in the direct watershed of a lake included in the list adopted pursuant to section 420-D, subsection 3, any applicable storm water quality standards adopted pursuant to section 420-D. For redevelopment projects only, the standards for storm water management in section 420-D are met if the proposed development is located in a designated area served by a department-approved management system for storm water as described in section 420-D, subsection 2, as long as the owner or operator of the parcel upon which the proposed development will be located enters into or obtains and remains in compliance with all agreements, permits and approvals necessary for the proposed development to be served by such management system for storm water.

[2009, c. 506, §1 (AMD); 2009, c. 506, §3 (AFF) .]

5. Ground water. The proposed development will not pose an unreasonable risk that a discharge to a significant ground water aquifer will occur.

[1987, c. 812, §§10, 18 (RPR) .]

6. Infrastructure. The developer has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal, required for the development, and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.

[1999, c. 468, §10 (AMD) .]

7. Flooding. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

[1987, c. 812, §§10, 18 (NEW) .]

8. Sand supply.

[1993, c. 383, §23 (RP); 1993, c. 383, §42 (AFF) .]

9. Blasting. Blasting will be conducted in accordance with the standards in section 490-Z, subsection 14 unless otherwise approved by the department.

[2007, c. 297, §2 (NEW) .]

10. Special provisions; wind energy development or offshore wind power project. In the case of a grid-scale wind energy development, or an offshore wind power project with an aggregate generating capacity of 3 megawatts or more, the proposed generating facilities, as defined in Title 35-A, section 3451, subsection 5:

A. Will be designed and sited to avoid unreasonable adverse shadow flicker effects; [2007, c. 661, Pt. B, §12 (NEW) .]

B. Will be constructed with setbacks adequate to protect public safety. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities; and [2007, c. 661, Pt. B, §12 (NEW) .]

C. Will provide significant tangible benefits as determined pursuant to Title 35-A, section 3454, if the development is an expedited wind energy development. [2007, c. 661, Pt. B, §12 (NEW) .]

The Department of Labor, the Executive Department, State Planning Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority.

For purposes of this subsection, "grid-scale wind energy development," "primary siting authority," "significant tangible benefits" and "expedited wind energy development" have the same meanings as in Title 35-A, section 3451.

[2009, c. 615, Pt. E, §18 (AMD) .]

SECTION HISTORY

1969, c. 571, §2 (NEW). 1971, c. 256, §5 (AMD). 1971, c. 476, §2 (AMD). 1971, c. 613, §§5-8 (AMD). 1971, c. 618, §12 (AMD). 1975, c. 240, (AMD). 1977, c. 300, §30 (AMD). 1977, c. 374, §3 (AMD). 1977, c. 623, (AMD). 1977, c. 696, §343 (AMD). 1981, c. 194, §3 (AMD). 1981, c. 449, §§8,9 (AMD). 1983, c. 500, §3 (AMD). 1983, c. 513, §3 (AMD). 1985, c. 746, §21 (AMD). 1987, c. 141, §B36 (AMD). 1987, c. 760, §1 (AMD). 1987, c. 812, §§10,18 (RPR). 1989, c. 502, §B50 (AMD). 1989, c. 610, (AMD). 1989, c. 890, §§A40,B89-91 (AMD). 1993, c. 383, §§21-23 (AMD). 1993, c. 383, §42 (AFF). 1995, c. 287, §§1,2 (AMD). 1995, c. 700, §6 (AMD). 1995, c. 704, §§A8-11 (AMD). 1995, c. 704, §C2 (AFF). 1997, c. 502, §§7,8 (AMD). 1997, c. 603, §§8,9 (AFF). 1999, c. 468, §§9,10 (AMD). 2005, c. 452, §A3 (AMD). 2007, c. 297, §2 (AMD). 2007, c. 661, Pt. B, §§11, 12 (AMD). 2009, c. 293, §1 (AMD). 2009, c. 506, §1 (AMD). 2009, c. 506, §3 (AFF). 2009, c. 615, Pt. E, §§17, 18 (AMD). 2011, c. 359, §3 (AMD).

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